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Permanent Delegation to the United Nations Office
and other international organisations in Geneva

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NOTE VERBALE

Subject: OHCHR – Ad-hoc Committee on the elaboration of complementary standards to ICERD questionnaire (Para. 4 of A/HRC/21/30) – EU contribution

I have the honour to transmit herewith a contribution by the European Union to the work of the Ad hoc committee on the elaboration of complementary standards. Please find attached the EU reply to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) questionnaire, on paragraph 4 of Resolution A/HRC/21/30.



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Ad hoc committee on the elaboration of complementary standards to ICERD – questionnaire (para. 4 of A/HRC/21/30)

Contribution by the European Union

Q1 Information on the phenomena of xenophobia in the EU, including any general trends

According to the latest annual report of the European Union Agency for Fundamental Rights (*Fundamental rights: challenges and achievements in 2011*),¹ the key developments in the area of racism and ethnic discrimination, include the following:

- incidents of racist crime and violence continue to occur in many EU Member States. While gaps in data collection of such instances remain, some EU Member States are taking steps to improve data collection on racist crime;
- at EU Member State level studies reveal persisting disadvantages of second-generation migrant school children from particular backgrounds, while Roma children continue to experience disadvantages at school. Discrimination testing in some Member States reveals discrimination in employment and housing;
- whereas several Member States begin introducing measures at the national level to improve Roma inclusion, recent data show the situation of Roma remain critical with respect to healthcare, education, employment, housing, poverty and discrimination.

The report provides also data on trends in officially recorded racist crime, antisemitic crime and right-wing extremist crime in 2000-2010. In majority of those EU Member States where official data was available, the overall trend of these crimes seemed to be declining. However, as underlined in the report, many EU Member States still do not have systematic mechanisms of data collection in place and therefore it remains difficult to quantify the prevalence of racist crime in the EU or to compare trends over time among Member States. Furthermore, victims and witnesses of hate crimes are often reluctant to report them, whether to law enforcement agencies, the criminal justice system, non-governmental organisations or victim support groups. As a result, many crimes remain unreported.²

According to the latest **Special Eurobarometer on Discrimination in the EU**³, in 2012 overall discrimination is believed to be widespread, particularly on the grounds of ethnic origin (56%, down from 61% in May 2009). Furthermore, in 2012 39% of Europeans

¹ http://fra.europa.eu/sites/default/files/fra_uploads/2225-FRA-2012_annual-report-2011-chapter6_EN.pdf

² <http://fra.europa.eu/en/publication/2012/making-hate-crime-visible-european-union-acknowledging-victims-rights>

³ http://ec.europa.eu/public_opinion/archives/ebs/ebs_393_en.pdf

believe discrimination on the grounds of religion or beliefs is widespread while more than half continue to see it as rare or non-existent (56%; -1 since 2009).

Q2 How is xenophobia addressed in the EU? Which mechanisms does the EU have in place?

The EU addresses xenophobia as part of its general policy to fight against different forms and manifestations of racism and xenophobia, including by monitoring the implementation of relevant EU law, by providing financial support to stakeholders' activities and through various activities related to awareness-raising, data collection and the exchange of experiences and information.

1. EU law

Council Directive 2000/43/EC of 29 June 2000, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, sets out a binding framework by prohibiting racial discrimination throughout the EU in the areas of employment, education, social protection (including social security and health care), social advantages and access to goods and services (including housing). The Directive bans direct and indirect discrimination, harassment and instruction to discriminate. All EU Member States have now transposed this Directive into national legislation. The European Commission monitors the correct implementation of this instrument by all EU Member States.

Council Directive 2000/78/EC of 27 November 2000 establishes a general framework for equal treatment in employment and occupation. This Directive covers direct and indirect discrimination, as well as harassment and instruction to discriminate, in employment and training on the grounds of religion or belief, age, disability and sexual orientation. It includes specific requirements on reasonable accommodation for disabled persons. The European Commission monitors the correct implementation of this so-called "**Employment Equality Directive**" or "**Employment Framework Directive**" by all EU Member States.⁴

In addition, on the basis of an impact assessment on the possible enlargement of the scope of the "Employment Equality Directive", the Commission adopted, on 2 July 2008, a **proposal for a Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation outside the labour market**.⁵ This proposal, which is based on Article 19 TFEU, is currently being discussed in the Council. On 2 April 2009, the Parliament adopted its opinion broadly supporting the proposal, while suggesting several amendments. This instrument would also contribute to the fight against racism and xenophobia as discrimination and other manifestations of intolerance are often based both on ethnic and religious motives.

⁴ For more information, please see http://ec.europa.eu/justice/discrimination/law/index_en.htm.

⁵ COM (2008) 426 final, 02.07.2008.

The **Audiovisual Media Services Directive 2010/13/EU**⁶ prohibits content inciting to hatred on grounds of race, sex, religion or nationality in all audiovisual media services (both television broadcasts and on-demand services), whatever their means of delivery, including the Internet. This requirement also applies to third country providers, if they use an uplink to a satellite or satellite transmission capacity appertaining to an EU Member State. The competent authorities in the EU Member States are responsible for the application of the rules of the Audiovisual Media Services Directive. In the light of freedom of expression and media pluralism, the interdiction of television channels or other audiovisual media services across EU borders cannot be justified except by very serious violations of the principles of democratic, pluralistic and open society acknowledged in the Directive (rules prohibiting hate speech and protecting minors against seriously harmful content). The cases of “Al Manar” and “Sahar 1” channels, banned from the European satellite systems, showed that the cooperation between audiovisual media regulators within Europe works effectively. In addition, the Directive obliges Member States to ensure that audiovisual commercial communications (all forms of commercial speech, including television advertising, sponsorship, teleshopping and product placement) “shall not include or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation”.

Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law⁷ aims to approximate national criminal laws so that the same racist or xenophobic behaviour constitutes an offence in all Member States and that effective, proportionate and dissuasive penalties are provided for natural and legal persons having committed or being liable for such offences. The Framework Decision obliges all Member States to make punishable by criminal penalties the intentional public incitement to racist or xenophobic violence or hatred directed against a group of persons or a member of a group defined by reference to race, colour, religion, descent or national or ethnic origin, including when committed by public dissemination or distribution of tracts, pictures or other material. In addition, Member States have to penalise the public condoning, denial or gross trivialization of crimes of genocide, crimes against humanity and war crimes, as defined in the Statute of the International Criminal Court (Articles 6, 7 and 8), as well as of the crimes defined by the Tribunal of Nuremberg, “when the conduct is carried out in manner likely to incite to violence or hatred against such group of member”. As for offences other than those referred to in the Framework Decision, Member States must ensure that a racist and xenophobic motivation is considered as an aggravating circumstance or may be taken into account by the courts in the determination of the penalties. Member States shall take the necessary measures to comply with the Framework Decision by 28 November 2010. The Commission monitors closely the transposition and implementation of this EU law and will publish a report to this end in 2013. The Commission is not authorized under the

⁶ For more information, please see http://ec.europa.eu/avpolicy/reg/tvwf/index_en.htm.

⁷ For more information, please see http://ec.europa.eu/justice/fundamental-rights/racism-xenophobia/framework-decision/index_en.htm.

Treaties to launch infringement proceedings on the basis of Framework Decisions until 1 December 2014.

The **Data Protection Directive 95/46/EC** aims to set up an EU legal framework for the protection of personal data and to ensure the free movement of such data within the EU. This Directive provides in its Article 8 for the prohibition of the processing of special categories of data (sensitive data) which are the following: data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade unions membership and data concerning health or sex life. The rationale of this article is to prohibit discrimination. However, processing thereof is allowed in certain instances and under specific conditions provided for in Article 8. The proposal for a General Data Protection Regulation that will repeal Directive 95/46/EC maintains the prohibition of the processing of special categories of data adding thereto genetic data, data concerning criminal convictions or related security measures.⁸

The **Schengen Borders Code** and the **Visa Code** require that border guards and consular staff perform their tasks with no discrimination against travellers on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.⁹

The **Charter of Fundamental Rights of the European Union** prohibits in its Article 21 any discrimination on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, sexual orientation or nationality. The Charter applies to actions by all EU institutions and bodies. It concerns in particular the legislative work of the European Parliament, the Council and the Commission, which must be in full conformity with rights enshrined in the Charter. The Charter applies also to Member States, but only when they are implementing EU law. The public authorities of the Member States are bound to comply with the Charter when they are, for instance, applying EU regulations or decisions or implementing EU directives. To put in practice the Charter, the Commission adopted in October 2010 a Strategy for its effective implementation. It is announced in this Strategy that the EU must lead by example when it legislates. The Commission therefore adopted in 2011 new Guidance on Fundamental Rights in the Commission Impact Assessment and set up an interservice group on the implementation of the Charter. The Commission publishes annual reports to review the concrete steps undertaken in ensuring the effective implementation of the Charter and to highlight important developments in each year.

⁸ For more information, please see http://ec.europa.eu/justice/data-protection/index_en.htm.

⁹ Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders, OJ L 105 of 13.4.2006, p. 1. Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas, OJ L 243 of 15.9.2009, p. 1. For more information, please see: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/index_en.htm.

2. Financial support¹⁰

The "Non-discrimination and diversity" strand of the **PROGRESS** programme finances projects to support national authorities in developing their national policy to combat discrimination and promote equality beyond legislation, fostering the dissemination of information, identifying best practices, and better implementing their legislation on non-discrimination adopted following Directives 2000/43/EC and 2000/78/EC. Also EU-level NGO networks active in combating discrimination on the ground of racial or ethnic origin such as ENAR, ERIO or EQUINET receive financial support from the Commission through the PROGRESS programme.

Financial support to national authorities is also provided for instance through the **External Borders Fund**, which focuses on training of Border Guards and other bodies involved in border control, in order to ensure that the knowledge of the Schengen Borders Code is fully known and applied also as regards the principle of non-discrimination in border control.

To maximise the successful integration of migrants into their host societies the **European Integration Fund** (EIF) for the Integration of non-EU immigrants seeks to promote European cooperation, with the objective of granting comparable rights, responsibilities and opportunities for all. The initiatives of the EIF include programmes for improving diversity management in neighbourhoods, intercultural training and dialogue, the promotion of courses for better understanding the integration processes, platforms and tools for comparative learning, measures for sharing information and best practices among European integration practitioners (e.g. online discussion forums, conferences, etc.) and activities in the hosting EU State and in the immigrant's country of origin on introduction to the host society.

Financial support to stakeholders' activities is also provided for instance through the **Europe for Citizens** programme, which aim at developing sense of European identity based on the values such as respect for diversity, fight against racism, xenophobia and discrimination. Through this programme financial support can also be provided to activities and initiatives contributing to the reflection on the origins of European integration linked to the tragic experiences of Holocaust and crimes of Stalinism.¹¹ Stakeholders' activities are also supported for instance through the **Fundamental Rights and Citizenship Programme**, which aims, as one of its general objectives, to fight against racism, xenophobia and antisemitism (for instance racist or antisemitic hate speech and hate crime) and to promote a better interfaith and intercultural understanding and improved tolerance throughout the European Union.

¹⁰ For more information, please see http://ec.europa.eu/justice/fundamental-rights/racism-xenophobia/index_en.htm.

3. Activities on awareness raising, data collection and exchange of information

The **European Union Agency for Fundamental Rights (FRA)** collects and disseminates reliable and comparable data on the situation of fundamental rights on the ground on in the 27 Member States, within the scope of EU law. Building on the work of the former European Monitoring Centre on Racism and Xenophobia (EUMC), the Agency continues to work on racism, xenophobia and related intolerance, while also adding a variety of topics such as the rights of the child; asylum, immigration and integration of migrants; visa and border control; access to justice; data protection; and all forms of discrimination. In 2012, the Agency published several studies or reports which provide valuable information for the fight against racism and xenophobia, including reports on *The Racial Equality Directive: application and challenges*, *The situation of Roma in 11 EU Member States - Survey results at a glance*, *EU-MIDIS Data in Focus Report 6: Minorities as Victims of Crime* and a report on *Making hate crime visible in the European Union: acknowledging victims' rights*.¹²

The Commission has launched several **Eurobarometer surveys on discrimination**¹³ (in 2006, 2008 and 2009, 2012). The Commission has also recently published a report on discrimination of ethnic minorities and migrants in employment produced by its Network of Socioeconomic Experts in the antidiscrimination field.

The information campaign **“For Diversity - Against Discrimination”** launched in 2003 by the Commission has been seeking to raise awareness of discrimination also on the grounds of racial or ethnic origin as well as to promote the benefits of diversity.¹⁴

The European Commission has a number of activities aiming to **foster cooperation between key actors to fight against discrimination on**, amongst others, the grounds of race or ethnic origin¹⁵:

- Since 2005 the Commission has been promoting the **‘Business Case for Diversity’** showing that diversity management – whereby employers recognise, value and include people more often object of discrimination - makes good business sense. To continue supporting voluntary initiatives promoting diversity management in the workplace, an EU-funded project which aims to launch and maintain a platform for EU-level exchange between Diversity Charters in Europe is being implemented.
- The Commission set up in 2008 a **governmental expert group in the field of non-discrimination and the promotion of equality**. The group examines the impact of

¹² <http://fra.europa.eu/en/publications-and-resources>

¹³ http://ec.europa.eu/public_opinion/archives/ebs/ebs_393_en.pdf

¹⁴ http://ec.europa.eu/justice/discrimination/diversity/index_en.htm

¹⁵ For more details, please see: http://ec.europa.eu/justice/discrimination/index_en.htm.

national and EU-level non-discrimination measures, validates good practice through peer learning and evaluates the effectiveness of non-discrimination policies. A seminar on good practices in public policies on accessing and progressing in employment focused on ethnic minorities was held in Berlin on 22 October 2010.

- Since 2007, the **Equality Summit** has been co-organised annually by the Member State holding the Presidency of the Council of the EU in the second half of the year together with the European Commission. The Equality Summit promotes equal rights and equal opportunities for all in the EU. It is an occasion for sharing knowledge and experiences with the goal of developing more effective ways of counteracting all forms of discrimination. The Summit targets particularly discrimination on the grounds of racial or ethnic origin, religion and belief, age, disability, sexual orientation and gender. The Summit brings together every year around 300 high-level delegates from EU and acceding countries and governments, NGOs, social partners, media, academics, and businesses.

Concerning the specific situation of the Roma¹⁶, the Commission issued on 5th April 2011 a Communication on an **EU Framework for National Roma Integration Strategies** up to 2020, which encourages Member States to adopt or develop further a comprehensive approach to Roma integration and endorse goals in education, employment, access to healthcare and housing. Member States were requested to prepare or revise their national Roma integration strategies and present them to the Commission by the end of December 2011. All Member States have submitted a strategy – except for Malta, which do not have Roma population on its territory, which shows that there is a strong political commitment.

On 21 May 2012, the European Commission adopted its **first assessment report of the National Roma Integration Strategies** submitted by the Member States as response to the EU Framework for National Roma Integration Strategies presented in April 2011. The Commission report highlights that Member States need stronger efforts to live up to their responsibilities, by adopting more concrete measures, explicit targets for measurable deliverables, clearly earmarked funding at national level and a sound national monitoring and evaluation system. In addition, the specific attention should be devoted to antidiscrimination and segregation measures. Not all Member States have addressed the important issues of access to decent housing and healthcare. The Commission is also emphasizing on the importance of close cooperation and continuous dialogue with (Roma) civil society (alongside regional and local authorities) in the implementation and monitoring of national strategies. The European Commission expects the governments to address these priorities pointed out in the report. The European Commission will review annually the implementation of the National Roma Integration Strategies and report to the European Parliament and the Council.

Since 2009, each EU presidency has hosted a meeting of the **European Platform for Roma Inclusion**, on various topics. The European Platform for Roma Inclusion gathers

¹⁶ For more information, please consult: http://ec.europa.eu/justice/discrimination/roma/index_en.htm.

representatives from the EU institutions, Member States, international organisations, academia and civil society organisations active for Roma inclusion. Following the Commission's Communication on an EU Framework for National Roma Integration Strategies, the role and operating mode of the European Platform for Roma Inclusion will be strengthened.

Le sport peut apporter une importante contribution à la cohésion sociale en Europe, tel est le constat inscrit dans le **Livre blanc sur le sport** publié en 2007. **L'article 165 TFUE** donne à l'UE une nouvelle compétence de soutien, de coordination et de complément pour le sport. L'article 165 appelle l'UE à contribuer à la promotion des questions sportives. Il prévoit que l'action de l'UE vise à développer la dimension européenne du sport et soutient un renforcement de la coopération dans le domaine du sport avec les pays tiers et les organisations internationales. L'impartialité et l'ouverture dans le sport sont des thèmes dans la **Communication sur le Sport (janvier 2011)** sur la mise en œuvre des nouvelles dispositions en faveur du sport inscrites dans le Traité de Lisbonne et 1

Ces deux thématiques serviront concrètement la lutte contre le racisme et la xénophobie.¹⁷

Qviii How is assistance provided to victims and/or affected communities of racism, racial discrimination, xenophobia and related tolerance in the EU?

A new Directive 2012/29/EU of the European Parliament and of the Council on victims of crime, replacing Council Framework Decision 2001/220/JHA, was adopted on 25 October 2012.¹⁸ This Directive, which is to be implemented by all Member States by 16 November 2015, establishes minimum standards on the rights, support and protection of victims of crime, and provides them with access to justice, compensation and restoration. The Directive ensures that all victims of crime will benefit from an individual assessment of their protection needs. Particular attention will be paid also to the type or nature and circumstances of the particular crime, such as the racist or xenophobic motivation of the crime.

This Directive forms the essential part of the horizontal package of measures, launched by the European Commission in May 2011, aiming at strengthening the rights of victims of crime so that any victim can rely on the same basic level of rights – whatever their nationality and wherever in the EU the crime takes place.

The new Directive will bring significant value added compared to the current legal framework (the 2001 Framework Decision on the standing of victims in criminal proceedings). Apart from being enforceable under the Lisbon Treaty and generally containing more concrete rights for victims and clearer obligations for Member States, it goes further than the Framework Decision in many ways, including:

¹⁷ For more information, please consult: http://ec.europa.eu/sport/what-we-do/discrimination_en.htm.

¹⁸ For more information, please consult: http://ec.europa.eu/justice/criminal/victims/index_en.htm.

- Access to victim support – Member States must ensure access for victims and their family members to general victim support and specialist support, in accordance to their needs. Support is not dependent on the victim having reported the crime. Member States must facilitate referrals from police to victim support organisations.
- Individual assessment to identify vulnerability and special protection measures – All victims will be individually assessed to determine whether they are vulnerable to secondary or repeat victimisation or intimidation during criminal proceedings. If they have specific needs, a whole range of special measures will be put in place to protect them. Children are always presumed vulnerable and particular attention will be paid to some categories of victims such as victims of hate crime.
- Information rights – Victims will receive a range of information from first contact with authorities as well as information about their case, including decision to end investigation, not to prosecute and the final judgement.
- Protection of all victims is reinforced – The privacy of victims and their family members must be respected and contact with the offender avoided (all new court buildings must have separate waiting areas).
- Training of practitioners has become an obligation and emphasis is also put on cooperation between Member States and at national level.

Qix Additional information concerning EU external action in the field of racism and xenophobia

On 21 March 2012, the International Day for the Elimination of Racial Discrimination, High Representative Ashton issued a declaration on behalf of the EU, stating that "the European Union is firmly committed to fighting all forms of racism, racial discrimination, xenophobia and similar types of intolerance, including discrimination on the basis of sexual orientation or gender identity, which are incompatible with the values the EU is founded upon."

In its external action, the EU continued to raise racism and xenophobia-related issues in its political dialogues with non-EU countries, for example with Russia. These issues also continue to be taken into consideration in cooperation strategies; for example, under the European Neighbourhood Policy Action Plans, the partner countries commit themselves to combating all forms of discrimination, religious intolerance, racism and xenophobia.

The EU continued to join forces with regional bodies such as the Council of Europe's European Commission against Racism and Intolerance (ECRI). In the OSCE framework, the EU closely coordinated to advance the implementation of the commitments made by the 56 OSCE Participating States as regards combating racism, xenophobia and discrimination.

At the multilateral level, the EU also actively cooperated with the UN in tackling racism and discrimination. It supported the mandate of the UN Special Rapporteur on contemporary forms of racism, xenophobia and related intolerance, Mr Mutama Ruteere, and his predecessor, Mr Githu Muigai. Eleven years after the 2001 World Conference

against Racism, Racial Discrimination, Xenophobia and Related Intolerance, the EU remained fully committed to the principal objective of the 2001 Durban Conference, which is the total elimination of racism, racial discrimination, xenophobia and related intolerance.

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) is the universal foundation for efforts to prevent, combat and eradicate racism. The European Union continued to call on all states that have not yet ratified or fully implemented the Convention to do so.

The EU continued to mainstream the fight against discrimination in its international cooperation. Through its European Instrument for Democracy and Human Rights (EIDHR), the EU has supported a wide range of civil society organisations in some 120 recent projects, worth a total of approximately € 24 million. In addition, through the EIDHR, the EU supported the United Nations High Commissioner for Human Rights (OHCHR) in the implementation of existing international standards on equality and non-discrimination, in particularly the International Convention on the Elimination of Racial Discrimination.

Consistent with the EU's principled policy in the area, the PSC endorsed on 24 July 2012 a Strategy Paper entitled *"the EU in the follow-up to the Durban Declaration and Programme of Action"*.

In the context of the Joint EU and African Union strategic partnership on democratic governance and human rights, both parties confirmed in 2012 the high importance they attach to the fight against racism, racial discrimination, xenophobia and related intolerance.

On 5 June 2012, the Delegations of the European Union and African Union in Geneva organised a joint workshop for the Member States of their respective organisations, with a view to having an exchange of best practices at local, national and regional levels on (a) combating racial discrimination in effect and (b) addressing incitement to racial hatred.